

SECTION 404/WETLANDS PROGRAM

- BACKGROUND
- STATUTORY
RESPONSIBILITIES
- LINKS TO OTHER PROGRAMS

BACKGROUND: WHO WE ARE AND WHERE WE WORK

- TOM TAYLOR - IOWA AND NEBRASKA
- KATHY MULDER - KANSAS
- VENESSA MADDEN - MISSOURI

BACKGROUND: SECTION 404 OF THE CLEAN WATER ACT

- Requires a permit from the Corps of Engineers for the discharge of dredged or fill material into a water of the U.S.
 - **NATIONWIDE PERMITS FOR DISCHARGES THAT HAVE MINIMAL IMPACTS ON THE AQUATIC ENVIRONMENT**
 - **INDIVIDUAL PERMITS FOR DISCHARGES THAT HAVE A GREATER IMPACT ON THE AQUATIC ENVIRONMENT**
- Corps jurisdiction, *except in wetlands*, is waterward of the ordinary high water mark (OHWM).

BACKGROUND: SECTION 404 OF THE CLEAN WATER ACT

WATERS OF THE U.S. INCLUDE:

- LAKES
- STREAMS AND RIVERS (PERENNIAL AND INTERMITTENT)
- IMPOUNDMENTS OF WATER
- MUDFLATS AND SANDFLATS
- BOGS AND SWAMPS
- MARSHES
- SLOUGHS
- PRAIRIE POTHOLE
- WETLANDS
- PLAYA LAKES
- WET MEADOWS
- NATURAL PONDS



BACKGROUND: SECTION 404 OF THE CLEAN WATER ACT

SPECIAL AQUATIC SITES INCLUDE:

- SANCTUARIES AND REFUGES
- WETLANDS
- MUD FLATS
- VEGETATED SHALLOWS
- RIFFLE POOL COMPLEXES
- CORAL REEFS

Examples of Situations in Which a Section 404

Permit is Required

- Construction of a building within a wetland.
- Construction of a structure that requires that a stream be moved.
- Road crossings over streams (culverts, bridges).
- Utility crossings that impact a stream or wetland.

SECTIONS 404(a) - 404(c)

- **§404 (a)**

Discharges into navigable waters at specified disposal sites (Corps)

- **§404 (b)**

Specification of Disposal Sites (Corps). Each disposal site must be specified and evaluated through the application of Guidelines developed by EPA in conjunction with the Corps. (*Section 404(b)(1) Guidelines*)

- **§404 (c)**

Denial or Restriction of Use of Defined Areas as Disposal Sites. EPA can prohibit, withdraw, restrict, or deny the specification of a site for disposal.

Section 404 (b)(1) Guidelines

- The Section 404(b)(1) Guidelines are the criteria used to review proposals to discharge dredged or fill material into waters of the U.S..
- No discharge is permitted if a practicable alternative exists that is less damaging to the aquatic environment.

Section 404 (b)(1) Guidelines

SEQUENCING

- Avoid impacts to the maximum extent practicable
- Minimize potential impacts
- Compensate for any remaining impacts to wetlands

In addition, the applicant must show that the project does not:

- Contribute to significant degradation of the waters of the U.S.
- Violate State water quality standards
- Violate an effluent standard
- Jeopardize a Federally listed threatened or endangered species
- Violate any requirement imposed by the Secretary of Commerce to protect a marine sanctuary.

Wetlands Mitigation

Purpose of the Clean Water Act:

“ . . . to restore and maintain the chemical, physical, and biological integrity of our nations waters.”

Wetlands Mitigation

RESTORATION

The re-establishment of wetland functions and values at a site no longer meeting the definition of a wetland or a site degraded with respect to certain functions and values.

CREATION

The conversion of an upland site into a functional wetland through the manipulation of hydrology and the introduction of hydrophytic plant communities (i.e., attempt to replicate natural wetland conditions relative to water and plants).

Wetlands Mitigation

- **ENHANCEMENT**

The improvement or addition of one or more functions and values to an existing wetland usually through management changes, (e.g., direct nut seeding for hardwoods, construction of dikes).

- **PRESERVATION**

The long-term protection of existing wetlands through acquisition, easement, and/or changes in management.

SECTIONS 404(f) and 404(q)

- **§404 (f)**

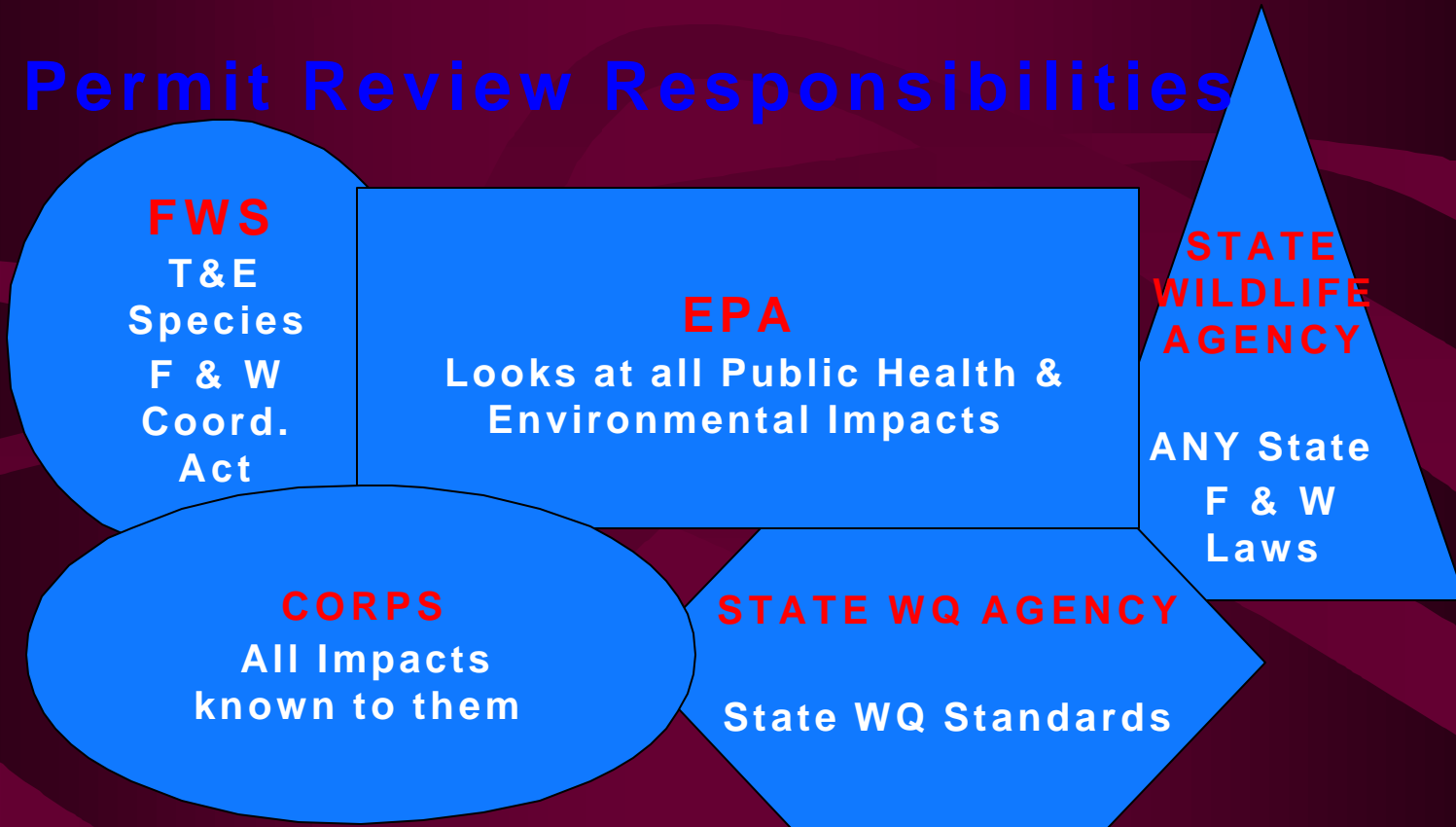
**Non-Prohibited Discharge of Dredged or Fill Material
(Corps/EPA) Exemptions to 404 permit requirements**

- **§404 (q)**

Requires the Corps to enter into agreements with EPA, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, as well as other appropriate Federal agencies to avoid delays and duplication of paperwork.

ROLES AND RESPONSIBILITIES OF AGENCIES

Permit Review Responsibilities



LINKS TO OTHER PROGRAMS

- NPDES PROGRAM
- STORMWATER
- CAFOS
- SUPERFUND
- WATER QUALITY STANDARDS
- 303(d) and TMDLS
- CLEAN WATER ACTION PLAN
- GROUNDWATER
- DRINKING WATER
- WATERSHEDS

SECTION 404 ENFORCEMENT

REGION VII EPA POC'S:

Dewayne Knott: 913.551.7299

Raju Kakarlapudi: 913.551.7320

404 ENFORCEMENT

- WHO ENFORCES SECTION 404?
 - U. S. Army Corps of Engineers
 - Permitted activities
 - Unpermitted activities when EPA denies the lead
 - U. S. Environmental Protection Agency
 - Unpermitted activities

404 ENFORCEMENT

- EPA Enforcement Action Points
 - Unpermitted Activities
 - Repeat Violations
 - Flagrant Violations
 - EPA Case Request
 - Corps Requests Administrative Penalty Action

404 ENFORCEMENT

- Enforcement Options
 - Monetary Penalty
 - Restorative/mitigative requirements
 - Supplemental Environmental projects
 - Referral to the Department of Justice
 - All of the above

